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Attorney for the Plaintiff

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X CASE NO.:

IMANI ROWELL,

PLAINTIFF,

PLAINTIFF'S COMPLAINT

-against-

(Plaintiff Demands a Trial by Jury
Of all issues herein)

THE CITY OF NEW YORK, NEW YORK CITY
POLICE DEPARTMENT ("NYPD"), "JOHN DOE",
AND "RICHARD ROE",

DEFENDANTS.

-----X

The plaintiff, by and through her attorney Gary S. Fish, Esq., complains against defendants as follows:

I. PARTIES AND JURISDICTION

1. On or about December 14, 2020, and at all times relevant herein, plaintiff resided and resides at 473 West 158th Street, #23, NY, NY 10032.
2. On or about December 14, 2020, and at all times relevant herein, on information and belief, defendant The City of New York, was and is a municipal corporation lawfully organized and existing under the laws of the State of New York, and on said date and at all times relevant herein, said defendant had and has a principal place of business located at 530 Municipal Building, NY, NY 10007.

3. On or about December 14, 2020, and at all times relevant herein, defendant New York City Police Department (“NYPD”) Police Department was a business entity on information and belief, under the dominion, and/or possession and/or ownership and/or control of defendant The City of New York, and said defendant, which on information and belief had and has a principal place of business located at One Police Plaza, NY, NY 10007, at all times relevant herein, acted pursuant to a municipality implemented plan, decision, custom rule, regulation and/or usage, and each act of wrongdoing herein after alleged to have been committed by defendants “John Doe” and “Richard Roe”, defendant NYPD police officers, whose names are presently unascertained, was committed pursuant to a municipality implemented policy, statement, ordinance, regulation, and/or decision officially and/or unofficially adopted by that body’s officers, resulting in the herein after described constitutional violations, on behalf of defendant The City of New York and/or defendant NYPD, which expressly and/or impliedly ratified each act of wrongdoing herein after alleged to have been committed by defendants herein.

4. On or about December 14, 2020, at or near 4049 White Plains Road, Bronx, NY, while plaintiff was in foreseeable violation of an Order of Protection and was an invitee in the business store of her then fiancée, who took out the Order of Protection, and to whom she had become reconciled, plaintiff, who was not resisting arrest, and who had no weapons on her person, was tasered by defendants in and around her breasts and stomach, including being tasered on the ground, resulting in her sustaining injuries and damages herein.

5. On or about December 14, 2020, and at all times relevant herein, defendants and each of them, wrongfully used excessive force without privilege and/or justification on the person of

plaintiff, and the defendants, acted pursuant to a municipality implemented custom, plan, rule and/or decision, and/or wrongfully fabricated inculpatory evidence and/or suppressed exculpatory evidence, pertaining to this plaintiff.

6. Pursuant to 28 U.S.C. Section 1343(a)(3), the Federal Court has original jurisdiction to redress the deprivation of civil rights under color of any law, statute, ordinance of any right, privilege, or immunity secured by the U.S. Constitution, providing for equal rights of any citizens or of all persons within U.S. jurisdiction, and jurisdiction exists herein under 42 U.S.C. Section 1983, proscribing excessive force and/or malicious prosecution therefor.

7. Pursuant to 28 U.S.C. Section 1391(b) in a case where jurisdiction is not solely founded on diversity jurisdiction, such as the present case, venue is proper where the defendant resides or a judicial district where a substantial part of the events giving rise to the claim occurred, and venue is proper therefore in the United States District Court, Southern District of New York.

**COUNT I
(VIOLATION OF 42 U.S.C. SECTION 1983-EXCESSIVE FORCE)**

8. On or about 12-14-2020, defendants "John Doe" and "Richard Roe", defendant NYPD police officers, at or near 4049 White Plains, Road, Bronx, NY, while the plaintiff was not a fleeing felon, and/or while no exigent circumstances then and there existed, tasered and/or used excessive force on the person of the plaintiff, and upon her breasts and stomach, and then acted within the scope of their authority and/or agency and/or employment on behalf of defendant New York City Police Department ("NYPD"), under the dominion, possession, ownership and/or control of defendant The City of New York.

9. Defendants' use of excessive force upon the person of the plaintiff was wanton,

intentional, wrongful, egregious, heinous, oppressive, and opprobrious, was calculated to and did result in loss of plaintiff's liberty and property rights. ,and defendants are liable for punitive and exemplary damages thereof.

10. As a result of defendants' use of excessive force and/or battery(ies) committed upon the person of the plaintiff on or about December 14, 2020, , the plaintiff incurred reasonable attorney fees and costs.

11. As a result of defendants' use of excessive force, and/or battery(ies) committed upon the person of the plaintiff, in violation of plaintiff's constitutional rights, the plaintiff was caused to sustain and will sustain injuries to her breasts and stomach, including but not limited to burning and/or scarring to her breasts and stomach.

12. As result of defendants' use of excessive force and/or battery(ies) committed upon the person of the plaintiff, in violation of the plaintiff's constitutional rights, the plaintiff sustained injuries to her neck, back and body, some of which injuries may be permanent in nature.

13. As a result of defendants' use of excessive force, and/or battery(ies) committed upon the person of the plaintiff, in violation of plaintiff's constitutional rights, the plaintiff, was caused to incur and will incur , hospital, medical and medical-related expenses.

14. Plaintiff attaches herewith, Plaintiff Exhibit "1", the HIPPA for Montefiore Medical Center, with the noted beneficiary, Office of Corporation Counsel City of New York.

**COUNT II
(VIOLATION OF 42 U.S.C. SECTION 1983-MALICIOUS PROSECUTION)**

15. Plaintiff herewith repeats, restates and realleges Paragraphs 1-14 herein above.

16. The defendants, and each of them, from on or about 12-14-2020, up to and including on or about November 15, 2021, wrongfully, and intentionally prosecuted, without probable

cause, and/or maliciously, in Bronx Criminal Court, 215 East 161st Street, Bronx, NY 10451, a criminal controlled substance case and/or domestic violence case, *inter alia*, against plaintiff, that was on or about 11-15-2021 dismissed, and thereby favorably terminated.

17. The malicious prosecution of plaintiff by defendants, was part and parcel of a unconstitutional municipality implemented plan, decision, custom and/or long standing usage, without probable cause and/or was extra-judicial and/or ultra vires in nature.

18. Defendants' 42 U.S.C Section 1983 violations were wilful, deliberate, wrongful, in conscious disregard of plaintiff's liberty and property rights, was oppressive, heinous and opprobrious, and defendants, and each of them, are liable for punitive and exemplary damages therefor.

19. As a result of defendants' herein constitutional violations, plaintiff incurred reasonable attorney fees and costs.

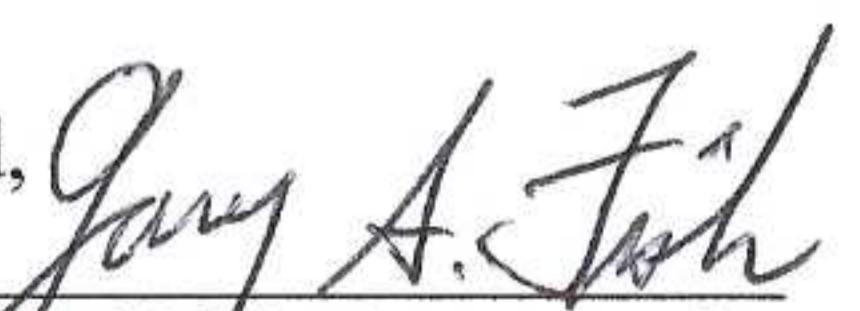
WHEREFORE, plaintiff prays for relief as follows:

AS AND FOR EACH OF THE FIRST AND SECOND COUNTS:

1. For damages in the amount of \$250,000.00 (Two Hundred Fifty Thousand Dollars and Zero Cents);
2. For punitive and exemplary damages in the amount of \$1,250,000.00; (One Million Two Hundred Fifty Thousand Dollars and Zero Cents);
3. For reasonable attorney fees and costs;
4. For disbursements; and
5. For any other just relief by the Court.

DATED: NY, NY; JULY 27, 2023

Respectfully submitted,


Gary S. Fish, Esq., (GSF 6551), Attorney for the Plaintiff, 20 Vesey Street, #210, NY, NY 10007; (212) 964-5072



AUTORIZATION FOR RELEASE OF HEALTH INFORMATION PURSUANT TO HIPAA

[This form has been approved by the New York State Department of Health]

Patient Name

Imani Powell

Date of Birth

08-11-1989

Social Security Number

124-76-2029

Patient Address

493 West 158th Street #23, NY NY 10032

I, or my authorized representative, request that health information regarding my care and treatment be released as set forth on this form. In accordance with New York State Law and the Privacy Rule of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), I understand that:

- This authorization may include disclosure of information relating to **ALCOHOL** and **DRUG ABUSE**, **MENTAL HEALTH TREATMENT**, except psychotherapy notes, and **CONFIDENTIAL HIV* RELATED INFORMATION** only if I place my initials on the appropriate line in Item 9(a). In the event the health information described below includes any of these types of information, and I initial the line on the box in Item 9(a), I specifically authorize release of such information to the person(s) indicated in Item 8.
- If I am authorizing the release of HIV-related, alcohol or drug treatment, or mental health treatment information, the recipient is prohibited from redisclosing such information without my authorization unless permitted to do so under federal or state law. I understand that I have the right to request a list of people who may receive or use my HIV-related information without authorization. If I experience discrimination because of the release or disclosure of HIV-related information, I may contact the New York State Division of Human Rights at (212) 480-2493 or the New York City Commission of Human Rights at (212) 306-7450. These agencies are responsible for protecting my rights.
- I have the right to revoke this authorization at any time by writing to the health care provider listed below. I understand that I may revoke this authorization except to the extent that action has already been taken based on this authorization.
- I understand that signing this authorization is voluntary. My treatment, payment, enrollment in a health plan, or eligibility for benefits will not be conditioned upon my authorization of this disclosure.
- Information disclosed under this authorization might be redisclosed by the recipient (except as noted above in Item 2), and this redisclosure may no longer be protected by federal or state law.

6. THIS AUTHORIZATION DOES NOT AUTHORIZE YOU TO DISCUSS MY HEALTH INFORMATION OR MEDICAL CARE WITH ANYONE OTHER THAN THE ATTORNEY OR GOVERNMENTAL AGENCY SPECIFIED IN ITEM 9 (b).

7. Name and address of health provider or entity to release this information:

Montefiore Medical Center, 1825 Eastchester Road Bronx NY 10461

8. Name and address of person(s) or category of person to whom this information will be sent:

Office of Corp. Counsel, City of New York, 700 Church Street, NY NY 10007

9. (a) Specific information to be released:

Medical Record from (insert date) January 1/2020 to (insert date) End of Litigation
 Entire Medical Record, including patient histories, office notes (except psychotherapy notes), test results, radiology studies, films, referrals, consults, billing records, insurance records, and records sent to you by other health care providers.

Other: All MRIs all CAT scans all films all diagnostic tests all X-Rays all Medication all billing records from January 1/2020 to End of Authorization

Include: (Indicate by Initialing)

 ADR Alcohol/Drug Treatment MH Mental Health Information HIV HIV-Related Information(b) By initialing here Q.T.R I authorize

Montefiore Medical Center

Name of individual health care provider

to discuss my health information with my attorney, or a government agency, listed here:

Office of Corp. Counsel, City of New York

(Name/ Firm Name or Government Agency Name)

10. Reason for release request of information:

 At request of

information: individual

11. Date or event on which this authorization will expire:

End of Litigation

12. If not the patient, name of person signing form:

13. Authority to sign on behalf of patient:

7

All items on this form have been completed and my questions about this form have been answered. In addition, I have been provided a copy of the form.

Signature of patient or representative authorized by law.

Date: January 12 2022

Human Immunodeficiency Virus that causes AIDS. The New York State Public Health Law protects information which reasonably could identify someone as having HIV symptoms or infection and information regarding a person's contacts.

Plaintiff Exhibit "1"